

Decision 05-10-013 October 6, 2005

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of PACIFIC GAS AND ELECTRIC COMPANY (U 39 M), a California Corporation, and PENINSULA CORRIDOR JOINT POWERS BOARD, a Governmental Agency, for an Expedited Order (1) Confirming that a Proposed Agreement for Encroachment on a Certain Easement in San Mateo County is Exempt from Commission Approval Under Public Utilities Code Section 853(b), or, in the Alternative, (2) Confirming that the Agreement is Exempt from Commission Approval Under General Order 69-C, or (3) Authorizing PG&E Under Public Utilities Code Section 851 to Enter into the Proposed Agreement.

Application 05-08-033  
(Filed August 25, 2005)

**DECISION GRANTING APPLICATION**

Pacific Gas and Electric Company (PG&E) and the Peninsula Corridor Joint Powers Board (JPB) request an expedited order confirming that PG&E's proposed Encroachment Agreement (Agreement) with JPB for the upgrade and expansion of the platform area and the installation, maintenance, and use of a temporary access ramp and stairs located at the Hillsdale Caltrain Station in the City of San Mateo within a PG&E easement area is exempt from the

requirements of Pub. Util. Code § 851 under § 853(b).<sup>1</sup> (A copy of the proposed Encroachment Agreement is attached to the application). Should the Commission find that § 853(b) is inapplicable to the proposed transaction, PG&E and JPB request that the Commission find the proposed transaction a limited use subject to General Order 69-C (GO 69-C). Should the Commission find that neither GO 69-C nor § 853(b) is applicable, PG&E and JPB request approval under § 851 for the proposed transaction. JPB, as the Lead Agency responsible for the proposed project under the California Environmental Quality Act (CEQA), has determined that this project is statutorily exempt from CEQA review and issued a notice of exemption under Public Resources Code Section 21080(b)(10). PG&E and JPB also request a finding that no further environmental review by the Commission is necessary.

The parties state that the installation, maintenance, and use of the temporary access ramp and stairs within PG&E's easement area requested in this application should help alleviate an immediate safety hazard to the public at the Hillsdale Caltrain Station. Therefore, PG&E and JPB request approval on an expedited basis so that the safety hazard can be swiftly addressed.

## **I. Description of the Project**

JPB is the owner of certain real property commonly known as the Caltrain railroad right-of-way located in the City of San Mateo, County of San Mateo (Property) at the Hillsdale Caltrain Station. JPB seeks to expand its Hillsdale Caltrain Station passenger platforms to safely accommodate passengers awaiting

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<sup>1</sup> All statutory references are to the California Public Utilities Code unless otherwise specified.

trains at the station. Presently, there is one outboard and one center passenger platform at this station, which allows only one train at a time to enter and leave the station. The Hillsdale Outboard Boarding Platform Project (Project) proposes an upgrade and expansion of the platform area that will allow north and south bound trains to enter and leave the station simultaneously. This will allow safer boarding and disembarking as well as ingress/egress to and from the platform area for passengers.

The Property is currently encumbered by two gas transmission easements. The first is an easement interest that was obtained for PG&E's Gas Transmission Line 101 by Final Order of Eminent Domain (No. 330719, May 23, 1991) against the Southern Pacific Transportation Company. The second is an easement obtained by PG&E in 1989 from the California Jockey Club (Bay Meadows Race Track). The portion of the Property encumbered by these two easements is the "Easement Area."

The scope of the Project includes an outbound northbound platform, two signalized pedestrian at-grade crossings, a median fence, stairs leading to the pedestrian platform, and an Americans with Disabilities Act (ADA) access ramp (Improvements). The center platform will be demolished and three at-grade crossings will be eliminated. The dimensions of the proposed encroachment into PG&E's Easement Area for the train station platform will be 345' long by 2' wide. The proposed encroachment into the Easement Area for the signalized pedestrian platform will be 20' long by 10.5' wide. The proposed encroachment into the Easement Area for the ADA ramp, which will be built directly over the gas transmission line, will be 95' long and 9' wide.

JPB has requested that PG&E grant permission for the construction of the Improvements within the Easement Area. PG&E has determined that the

Improvements, to be constructed pursuant to plans and specifications approved by PG&E, are compatible with the present full use of the Easement Area by PG&E, and PG&E is therefore willing to agree to allow construction within the Easement Area, subject to the terms and conditions in the Agreement.

The Improvements are temporary in nature since JPB is planning a project to relocate the entire Hillsdale Caltrain Station approximately 1000 feet north and construct new grade separations of several existing at-grade roadway crossings. The current Improvements will support the new station during the first phase of construction but will ultimately be demolished upon the opening of the new station.

## **II. The Safety Hazard**

PG&E and JPB assert that the installation of the access ramp and stairs will alleviate an immediate safety hazard to passengers at the station. The construction of the access ramp and stairs is one of a number of safety improvements JPB is making to the station. These safety improvements include the closing of three at-grade pedestrian crossings, installation of a crossing arm and lights at two at-grade pedestrian crossings, construction of an outboard boarding platform to eliminate the center island boarding platform, installation of a median fence, and construction of a parking lot to the east of the station. The access ramp and stairs will be built within the Easement Area to allow access to the platform from the eastern parking lot and easy egress from the platform in case of an emergency to insure compliance with ADA and fire codes.

JPB says that safety improvements are a high priority for Caltrain, and construction of these proposed improvements must be expedited to alleviate a serious public safety concern evidenced by a recent incident at the Hillsdale Caltrain Station where a train clipped a patron waiting on the soon to-be-

removed center platform. Passengers do not always heed the numerous signs directing patrons not to wait on the center island platform. This accident easily could have been more serious; the proposed improvement project will address this concern.

**III. The Proposed Improvements are Exempt Under Section 853(b) from the Requirements of Section 851**

The parties request an expedited order exempting the agreement from the requirements of § 851, pursuant to § 853(b).<sup>2</sup> Section 853(b) allows the Commission to exempt a public utility from the § 851 approval process if it finds that such approval is not necessary in the public interest.

In Decision (D.) 01-06-006, we granted the request of San Diego Gas and Electric Company (SDG&E) for an exemption from the requirements of § 851, pursuant to § 853(b), to lease space at its Mission and El Cajon substations to CalPeak Power LLC for installation and operation of electric generation units. We gave the following reasons: (1) the application responded to a pressing need, for which time is critical; (2) the relief is very limited; (3) SDG&E gave assurance that leasing space will in no way impair or affect SDG&E's ability to provide utility service; and (4) there were no substantive protests to the application.

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<sup>2</sup> (b) The commission may from time to time by order or rule, and subject to those terms and conditions as may be prescribed therein, exempt any public utility or class of public utility from this article [transfer or encumbrance of utility property] if it finds that the application thereof with respect to the public utility or class of public utility is not necessary in the public interest. The commission may establish rules or impose requirements deemed necessary to protect the interest of the customers or subscribers of the public utility or class of public utility exempted under this subdivision. These rules or requirements may include, but are not limited to, notification of a proposed sale or transfer of assets or stock and provision for refunds or credits to customers or subscribers.

Like the application in D.01-06-006, this application responds to a pressing need for which time is critical. However, in this case the timing is even more critical, as the pressing need in this application concerns a safety hazard and a threat to the welfare of passengers at the Hillsdale Caltrain Station. As in D.01-06-006, the relief sought by PG&E and JPB is very limited. The access ramp and stairs are temporary in nature since JPB is planning a project to relocate the entire Hillsdale Caltrain Station. Given the limited relief sought in this application, we should grant the exemption from the requirements of § 851.

The Agreement will in no way impair or affect PG&E's ability to provide utility service. The temporary access ramp and stairs are compatible with PG&E's gas transmission line facilities and JPB has agreed, pursuant to the Agreement, to coordinate its activities to avoid any interference with the use by PG&E of the Easement Area. These assurances from PG&E and JPB support the grant of an exemption from the requirements of § 851.

There are no protests to this application. Approving the application serves the public interest by allowing utility property (the Easement Area) to be used for other productive purposes – and addresses a critical issue of public safety – without interfering with the utility's operation or affecting service to utility customers. Therefore, as in D.01-06-006, pursuant to § 853(b), we will exempt PG&E from the requirements of § 851.

#### **IV. CEQA**

The parties contend that the project is categorically exempt from CEQA pursuant to Section 15305 of the CEQA Guidelines (14 Cal. Code Regs., §§ 15000, et seq.) and has been found statutorily exempt by the project's lead agency, JPB, pursuant to Section 21080(b)(10) of the Public Resources Code and Section 15275 of the CEQA Guidelines.

The CEQA Guidelines, adopted by the Commission in Rule 17.1(a) of the Commission's Rules of Practice and Procedure, include a list of categories of projects that have been determined not to have a significant effect on the environment and that are therefore exempt from the provisions of CEQA. (*Id.*, §§ 15300, et seq.) Among the listed exemptions is an exemption for the "[i]ssuance of minor encroachment permits." (*Id.*, § 15305, subd.(b).)

In our opinion, not only does the Encroachment Agreement qualify as a "minor encroachment permit," but also, the lead agency in this case has already made a determination that the proposed Improvements are statutorily exempt from CEQA. The CEQA Guidelines set out rules concerning which entity will act as the lead agency under CEQA when more than one public agency will issue discretionary permits for a project. (*Id.*, § 15051.) All other agencies with discretionary approval over the project are "responsible agencies." (*Id.*, § 15381.) In accordance with those rules, JPB is the lead agency in this case, and the Commission is a responsible agency. JPB has found the project statutorily exempt pursuant to Section 21080(b)(1) of the Public Resources Code and Section 15275 of the CEQA Guidelines, which states:

CEQA does not apply to the following mass transit projects:

- (a) The institution or increase of passenger or commuter service on rail lines or high-occupancy vehicle lanes already in use, including the modernization of existing stations and parking facilities.

JPB's Notice of Exemption, dated March 29, 2004, is attached to the application.

By our granting an exemption from § 851, we are holding that PG&E does not require Commission approval for the project. Since our approval is not required, neither is CEQA review. (D.01-06-006, pp. 8-9.) We find that we need not perform CEQA review as part of our § 853(b) review.

## **V. Conclusion**

We grant the request of PG&E and JPB for a limited exemption from the requirements of § 851. First, approval of the Agreement will not interfere with the PG&E's provision of quality service nor impair its ability to serve its customers. PG&E and JPB have determined that the access ramp and stairs, as designed, are compatible with the PG&E facilities. Pursuant to the Agreement, JPB has agreed to coordinate its activities to avoid any interference with the use by PG&E of the Easement Area. JPB designed the access ramp to facilitate PG&E's access to its gas transmission facilities to accommodate federally mandated leak detection surveys. Furthermore, under the terms of the Agreement, PG&E may terminate JPB's rights under the Agreement, at any time, upon 90 days' written notice to JPB, if PG&E, in its sole and absolute discretion, should determine that JPB's use of the Easement Area is not consistent with PG&E's operational needs in the future, or in any way interferes with, impairs or otherwise impedes PG&E's full use of its facilities installed or that may be installed by PG&E in the vicinity of the Easement Area.

Second, the access ramp and stairs are temporary in nature as JPB is planning to relocate the entire Hillsdale Caltrain Station approximately 1000 feet north and construct new grade separations of several existing at-grade roadway crossings. The current construction work will support the new station during the first phase of construction but will ultimately be demolished upon the opening of the new Hillsdale Caltrain Station. The access ramp has been designed to be easily removed to accommodate maintenance and reconstruction of PG&E's gas transmission facilities, if necessary. Finally, the Agreement provides that PG&E shall revoke the Agreement should JPB's use interfere with PG&E's service to its customers.



## **VI. Category and Need for Hearing**

In Resolution ALJ 176-3158, dated September 8, 2005, the Commission preliminarily categorized this proceeding as ratesetting, and preliminarily determined that hearings were not necessary. Based on the record, we affirm that this is a ratesetting proceeding, and that hearings are not necessary.

## **VII. Assignment of Proceeding**

Geoffrey F. Brown is the Assigned Commissioner and Robert Barnett is the assigned ALJ in this proceeding.

## **VIII. Comments on Draft Decision**

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

## **Findings of Fact**

1. The Hillsdale Outboard Boarding Platform Project proposes an upgrade and expansion of the platform area that will allow north and south bound trains to enter and leave the Hillsdale Caltrain Station simultaneously. This will allow safer boarding and disembarking as well as ingress/egress to and from the platform area for passengers.
2. The scope of the project includes an outbound northbound platform, two signalized pedestrian at-grade crossings, a median fence, stairs leading to the pedestrian platform, and an ADA access ramp. The center platform will be demolished and three at-grade crossings will be eliminated.
3. The installation of the access ramp and stairs plus removal of the central platform will alleviate an immediate safety hazard to passengers at the station.

4. The Improvements will allow two PG&E easements, the subject of this application, to be used for other productive purposes, such as public safety, without interfering with PG&E's operations or affecting services to the public.

5. Granting the application responds to a pressing need, for which time is critical; the relief is limited; PG&E has given assurance that the encroachment on the easements will in no way impair or affect its ability to provide utility service; and there are no protests to the application.

6. The project is categorically exempt from CEQA pursuant to Section 15306 of the CEQA Guidelines and has been found statutorily exempt by the project's lead agency, JPB, pursuant to Section 21080(b)(1)) of the Public Resources Code and Section 15275 of the CEQA Guidelines.

7. The application of Pub. Util. Code § 851 to this proposed agreement is not necessary in the public interest.

### **Conclusion of Law**

PG&E's proposed Encroachment Agreement with JPB for the upgrade and expansion of the platform area and the installation, maintenance, and use of a temporary access ramp and stairs located at the Hillsdale Caltrain Station in the City of San Mateo within a PG&E easement area is exempt from the requirements of Pub. Util. Code § 851 under § 853(b).

## **O R D E R**

### **IT IS ORDERED** that:

1. Pacific Gas and Electric Company's request for an exemption from the requirements of Pub. Util. Code § 851 is granted.

2. The scope of the exemption is limited to the utility easements for the purposes described in the application and this decision.

3. Application 05-08-033 is closed.

This order is effective today.

Dated October 6, 2005, at Los Angeles, California.

MICHAEL R. PEEVEY  
President  
GEOFFREY F. BROWN  
SUSAN P. KENNEDY  
DIAN M. GRUENEICH  
Commissioners

Commissioner John A. Bohn, being necessarily absent,  
did not participate.